

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

ALLEN ROBERT SCOTT,
Petitioner,

VS.

DOUGLAS DRETKE, Director,
T.D.C.J., Correctional
Institutions Division,
Respondent.

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CIVIL ACTION NO.4:05-CV-448-Y

ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS

Before the Court is the petition for writ of habeas corpus under 28 U.S.C. § 2254 of petitioner Allen Robert Scott, along with the September 15, 2005, findings, conclusions, and recommendation of the United States Magistrate Judge. The magistrate judge gave the parties until October 6, 2005, to file written objections to the findings, conclusions, and recommendation, and the Court extended that deadline until November 1, 2005. As of the date of this order, written objections have not been timely filed.

On November 7, 2005, the clerk of Court received and file-stamped petitioner Scott's written objections to the magistrate judge's findings, conclusions, and recommendation. As noted above, this Court extended the deadline for Scott to file written objections only until November 1, 2005, and expressly warned him that "failure to file written objections within the specified time will bar a party, except upon grounds of plain error or manifest injustice, from attacking on appeal any unobjected-to proposed factual findings and legal conclusions accepted by the district court." But Scott did not sign and file his objections until

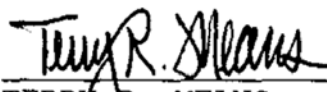
November 7, several days after the extended deadline.¹ As Scott certified that he did not complete the objections until November 7, and since they were not filed until that date, six days after the extension provided by the Court, the objections are untimely and will not be considered.

The Court has reviewed the pleadings and the record in this case, and has reviewed for clear error the proposed findings, conclusions and recommendation of the United States Magistrate Judge filed on September 15, 2005. The Court concludes that the petition for writ of habeas corpus should be dismissed as a successive petition filed without the permission of the Court of Appeals as required by 28 U.S.C. §2244(b)(1), for the reasons stated in the magistrate judge's findings and conclusions.

Therefore, the findings, conclusions and recommendation of the magistrate judge are ADOPTED.

Petitioner Scott's Petition for Writ of Habeas Corpus is DISMISSED WITHOUT PREJUDICE to his right to file a motion under 28 U.S.C. § 2244(b)(3)(A) in the United States Court of Appeals for the Fifth Circuit for leave to file a successive petition.

SIGNED November 9, 2005.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

¹As Scott hand delivered his objections to the Court, no issue arises relating to the placement of the document in the mail. Further, as Scott is not incarcerated, the "mailbox rule" does not apply.